

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

Jose L. Rodriguez (“Plaintiff”) challenges the Social Security Commissioner’s decision denying his applications for disability benefits. Specifically, Plaintiff contends that the decision of the Administrative Law Judge (“ALJ”) was not supported by substantial evidence because it did not account for the medical evidence presented to the Appeals Council after the issuance of the ALJ’s decision. (Joint Stip. at 3-6.) The Court agrees with Plaintiff for the reasons stated below.

1                   Newly Admitted Evidence

2           Under 42 U.S.C. § 405(g), this Court reviews the Commissioner's final  
3 decision to determine if: (1) the Commissioner's findings are supported by  
4 substantial evidence, and (2) the Commissioner used correct legal standards. *See*  
5 *Carmickle v. Comm'r of Soc. Sec. Admin.*, 533 F.3d 1155, 1159 (9th Cir. 2008);  
6 *Hoopai v. Astrue*, 499 F.3d 1071, 1074 (9th Cir. 2007). Substantial evidence is  
7 "such relevant evidence as a reasonable mind might accept as adequate to support a  
8 conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (citation omitted).  
9 To determine whether substantial evidence supports a finding, the reviewing court  
10 "must review the administrative record as a whole, weighing both the evidence that  
11 supports and the evidence that detracts from the Commissioner's conclusion."  
12 *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1998).

13           Moreover, when the Appeals Council "considers new evidence in deciding  
14 whether to review a decision of the ALJ, that evidence becomes part of the  
15 administrative record, which the district court must consider when reviewing the  
16 Commissioner's final decision for substantial evidence." *Taylor v. Comm'r of Soc.*  
17 *Sec. Admin.*, 659 F.3d 1228, 1232 (9th Cir. 2011). When the Appeals Council  
18 declines review, the ALJ's decision becomes the final decision of the Commissioner,  
19 and the district court reviews that decision for substantial evidence based on the  
20 record as a whole. *Brewes v. Comm'r of Soc. Sec. Admin.*, 682 F.3d 1157, 1161-62  
21 (9th Cir. 2012).

22           B.   The ALJ's Decision Was Not Supported by Substantial Evidence

23           Here, the ALJ found that Plaintiff was not disabled based upon the medical  
24 record as it existed at the time of the hearing. Specifically, the ALJ considered  
25 summary reports from consultative examiners Drs. Klein and Riahinejad, and brief  
26 evaluations from non-examining medical consultants Drs. Balson and Ligot.  
27 (Administrative Record "AR" at 31.) The ALJ gave great weight to the opinions of  
28 Drs. Riahinejad and Balson who found that Plaintiff was malingering and his

1 impairments were non-severe. (*Id.* at 32, 262-68.) Accordingly, the ALJ found that  
2 Plaintiff had no non-exertional limitations. (*Id.* at 32.)

3 However, the ALJ ignored records from Plaintiff's repeated visits to the  
4 emergency room at Los Angeles Community Hospital. There, doctors found that  
5 Plaintiff suffered from a severe anxiety problem, panic attacks, and depression. (*Id.*  
6 at 308-09, 314, 322.) These records support a diagnosis of depression and anxiety  
7 disorder. Moreover, records from the Northeast Mental Health Clinic further  
8 support the above diagnosis. (*Id.* at 338-46.)

9 More vital to the outcome of Plaintiff's disability determination are the  
10 records submitted to the Appeals Council following the ALJ's decision. (*Id.* at 3-7);  
11 *Taylor*, 659 F.3d at 1232 (the Court shall consider such evidence in deciding  
12 whether the ALJ's decision was supported by substantial evidence). This newly  
13 submitted evidence describes the extent of Plaintiff's illness and how it bears on his  
14 ability to work. In particular, a Mental Impairment Questionnaire Form completed  
15 by Dr. Desmond Chiong, who started treating Plaintiff in 2010, reveals a diagnosis  
16 of "severe depression and anxiety." (AR at 335.) Dr. Chiong further reported that  
17 Plaintiff "has been suffering from depression and anxiety since his teenage years"  
18 and his "symptoms impaired his ability to work and impact his cognitive ability as  
19 he is unable to concentrate." (*Id.* at 367.) Even with medication, Plaintiff "still  
20 experiences high anxiety." (*Id.*)

21 Because the ALJ's decision did not consider this new evidence, the Court  
22 finds that the decision denying benefits was not supported by substantial evidence.

23 C. Remand is Warranted

24 With error established, this Court has discretion to remand or reverse and  
25 award benefits. *McAllister v. Sullivan*, 888 F.2d 599, 603 (9th Cir. 1989). Where no  
26 useful purpose would be served by further proceedings, or where the record has been  
27 fully developed, it is appropriate to exercise this discretion to direct an immediate  
28 award of benefits. *See Benecke v. Barnhart*, 379 F.3d 587, 595-96 (9th Cir. 2004).

1 But where there are outstanding issues that must be resolved before a determination  
2 can be made, or it is not clear from the record that the ALJ would be required to find  
3 a plaintiff disabled if all the evidence were properly evaluated, remand is  
4 appropriate. *See id.* at 594.

5 Here, the ALJ must be given an opportunity to consider Plaintiff's claim in  
6 light of the newly presented evidence. Therefore, on remand, the ALJ shall  
7 reevaluate Plaintiff's application in light of the medical evidence as a whole,  
8 including the evidence newly submitted to the Appeals Council.<sup>2/</sup>

9 Based on the foregoing, IT IS ORDERED THAT judgment shall be entered  
10 **REVERSING** the decision of the Commissioner denying benefits and  
11 **REMANDING** the matter for further administrative action consistent with this  
12 decision.

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14 Dated: January 13, 2014

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17 Hon. Jay C. Gandhi

18 United States Magistrate Judge  
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25 <sup>2/</sup> The ALJ is required to reevaluate newly submitted evidence "only where it  
26 relates to the period on or before the date of the [ALJ] hearing decision." *See* 20  
27 C.F.R. § 404.970(b). Here, the ALJ entered his decision on May 10, 2011.  
28 Accordingly, the ALJ need not consider any new evidence that relates to Plaintiff's  
condition after May 10, 2011. (*See, e.g.*, AR at 375-444.)